REMARKS

The Office action dated July 11, 2006, and the references cited have been fully considered. In response, please consider the following remarks. Reconsideration and/or further prosecution of the application is respectfully requested.

All claims stand rejected under 35 USC § 102(b) as being anticipated Yun et al. "An Efficient Lock Protocol for Home-based Lazy Release Consistency".

Applicants respectfully traverse all rejections as the Office action neither presents a proper rejection of each and every claim limitation of any claim and the prior art of record neither teaches nor suggests all claim limitations as the claims require the lock manager to perform certain recited function and the Office fails to address these limitations and Yun et al. teaches a different operation of its system than that recited in the claims.

First, it is important to state the initial burden placed on the Office in presenting a proper rejection. It is well-established law that the burden is on the Office to initially present a *prima facie* unpatentability (e.g., anticipation, obvious) rejection, before Applicant has any burden of proof of disproving any application of a cited reference against a claim. *In re Warner*, 379 F2d. 1011, 1016, 154 USPA 173, 177 (C.C.P.A. 1967); Ex *parte Skinner*, 2 USPQ2d 1788, 1788-89 (B.P.A.I. 1986). The MPEP and law is clear that for anticipation, the reference *must teach each and every aspect of the claimed invention* either explicitly or impliedly, and the burden is on the Office to present a *prima facie* case of anticipation. MPEP § 706.02 (emphasis added). Inherent means it *must* occur. The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP § 2112 (*emphasis in original*).

All claims are rejected as being § 102 anticipated by Yun et al. Therefore, Yun et al must explicitly teach each and every claim limitation for a proper § 102 anticipation rejection, or the missing limitation be inherent - which means it *must* occur. In the computer and networking arts, inherency is very seldom appropriate because there typically always at least one other alternative

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way of implementing something and therefore it is typically not true that something not disclosed *must occur*.

Yun et al. operates fundamentally differently than the system which might be the reason that Yun et al. neither teaches nor suggests all the claim limitations of any pending claim.

The rejections presented in the Office action are pretty much the same, or at least based on the same rational which will now be addressed.

First, Applicants make a "demand for evidence" as provided for in the MPEP to explicitly point out where in Yun et al. the functionality performed by the lock manager (assuming a lock manager is actually taught by Yun et al.).

Next, it is Applicant's understanding based on studying the Office action that the Office believes that a lock manager exists in the system of Yun et al. (as it states that the "… preceding text excerpt clearly indicates a lock manager exists"). Next, the Office relies on Yun et al.'s presentation of the passing of information as illustrated in FIG. 2, which illustrates the passing of information among P0, P1, P2 and P3. Next, either the lock manager (which the Office believes is taught by Yun et al.) is not illustrated in FIG. 2, or at least is not P0, P1, nor P2 as the Office states that it considers P0, P1, nor P2 as the plurality of requestors (Office action page 3, "the plurality of requestor (sic) being P0, P1, and P2"). Next, Yun et al. in FIG. 2 illustrates, for example, that the passing of diffs is performed between P0 to P2 (top, right portion of FIG. 2), and *not* by the lock manager.

In fact, Yun et al. explicitly states and teaches that the "Releaser sends diffs for expected pages to be used by acquirer." Yun et al., page 528, last paragraph. It is the Releaser (i.e., the last granted requestor/acquirer) that sends the diffs to the acquirer (i.e., the next granted requestor). The lock manager doesn't touch the diffs. The lock manager doesn't touch the protected data. Therefore, the lock manager cannot send or receive it from a requestor.

Independent claim 1 recites that "said communicated grants include said protected data" and based on antecedent basis principles (i.e., the use of "said"), the grants to which it refers are the ones communicated by "from the lock manager to the plurality of requestors". In contrast,

Yun et al. teaches that the diffs are communicated from one requestor to the other requestor and not "from the lock manager to the plurality of requestors." Therefore, Yun et al. fails to teach all the claim limitations recited in independent claim 1. Moreover, Applicants submit that Yun et al. teaches away from such operation as it would introduce overhead based on Yun et al.'s implementation and the explicit purpose of Yun et al.'s improvement is to reduce overhead and be a more efficient lock protocol for HLRC.

Additionally, independent claims 6, 8 and 10 similarly recite that the protected data is sent in a grant message to the next requestor by the lock manager, and therefore is neither taught nor suggested by the prior art of record. Additionally, independent claims 12, 17 and 22 recite that the lock manager receives the protected data in a first release message, and the prior art of record teaches that the lock manager neither receives nor sends the protected data.

Therefore, as all the limitations of each and every independent claim, and therefore of each and every claim, is neither taught nor suggested by the prior art of record all claims are believed to be allowable, and Applicants respectfully request all rejections be withdrawn and all claims be allowed.

Moreover, if the Office actually performed its duty and complied with MPEP § 706 and specifically 37 CFR 1.104(c)(2), then the Office has cited the best reference(s) available. As these reference(s) neither teach nor suggest all the claim elements and limitations as required by the MPEP for a proper rejection, then *all pending claims are believed to be allowable over the best prior art available*, and Applicants request the claims be allowed and the application pass to issuance.

Applicants further note that because the Office has failed to present a *prima facie* rejection of any claim, the burden of proof has never shifted to Applicants to disprove a stated unpatentability rejection of any claim. Therefore, the burden of proof remains with the Office, and Applicants do not have a burden to disprove any of the rejections presented by the Office in this application. In reviewing the rejections of the dependent claims, Applicants again caution the Office that a prior art reference must explicitly teach each and every limitation or be

inherent, wherein inherency requires that something must occur, the possibility of occurring is not enough. MPEP § 2112.

In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over the prior art of record, the application is considered in good and proper form for allowance, and the Office is respectfully requested to issue a timely Notice of allowance in this case. Applicant requests any and all rejections and/or objections be withdrawn. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney.
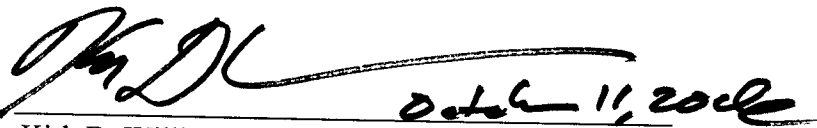
Applicants believe no extension of time is required, but hereby petitions any such extension of time required and authorizes the Commissioner to charge any associated fees to Deposit Account No. 501430. Moreover, the Commissioner is hereby generally authorized under 37 C.F.R. § 1.136(a)(3) to treat this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 requiring an extension of time as incorporating a request therefore, and the Commissioner is hereby specifically authorized to charge Deposit Account No. 501430 for any fee that may be due in connection with such a request for an extension of time. Moreover, the Commissioner is hereby authorized to charge payment of any fee due any under 37 C.F.R. §§ 1.16 and § 1.17 associated with this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 or credit any overpayment to Deposit Account No. 501430.

Respectfully submitted,
The Law Office of Kirk D. Williams

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By_____

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